

THE HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MAVERICK GAMING LLC,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

No. 22-cv-05325 DGE

**PLAINTIFF'S RESPONSE TO  
SHOALWATER BAY TRIBE'S NOTICE  
OF SUPPLEMENTAL AUTHORITY IN  
SUPPORT OF MOTION FOR LIMITED  
INTERVENTION**

NOTED ON MOTION CALENDAR: August,  
19, 2022

1 Plaintiff Maverick Gaming LLC (“Maverick”) respectfully submits this response to the  
 2 Shoalwater Bay Tribe’s (“Tribe”) September 12, 2022 filing, which notifies the Court of the Ninth  
 3 Circuit’s recent decision in *Klamath Irrigation District v. U.S. Bureau of Reclamation*, 2022 WL  
 4 4101175 (9th Cir. Sept. 8, 2022). This case in no way changes the Ninth Circuit’s legal standards  
 5 regarding Rule 19 and does not change the fact that the Tribe is not a “required party” under Rule  
 6 19 because it is adequately represented by the Secretary of the Interior.

7 As Maverick previously explained, Dkt. 78, at 4–5, it is black-letter law that, given the  
 8 federal government’s “trust responsibility” to Indian tribes, generally “Tribes are not necessary  
 9 parties” if the federal government is a party because “[t]he United States can adequately represent  
 10 an Indian tribe unless there exists a conflict of interest between the United States and the tribe.”  
 11 *Washington v. Daley*, 173 F.3d 1158, 1167–68 (9th Cir. 1999); *Sw. Ctr. for Biological Diversity*  
 12 *v. Babbitt*, 150 F.3d 1152, 1154 (9th Cir. 1998); *see also Dine Citizens Against Ruining Our Env’t*  
 13 *v. BIA*, 932 F.3d 843, 855 (9th Cir. 2019) (concluding that federal government did not adequately  
 14 represent tribal mine owner because its “overriding interest ... must be in complying with  
 15 environmental laws,” rather than approving continued mining operations).

16 *Klamath* is in perfect accord with these precedents. It found the federal government to be  
 17 an inadequate representative of absent Indian tribes because of conflicts of interest with the tribes:  
 18 “the Tribes are in active litigation over the degree to which Reclamation is willing to protect the  
 19 Tribes’ interests in several species of fish,” and the government’s “primary interest” was not in  
 20 defending the Tribes’ “reserved water and fishing rights” but in defending action “taken pursuant  
 21 to the [Endangered Species Act] and APA.” *Klamath*, 2022 WL 4101175, at \*7–8.

22 As Maverick has already noted, the Tribe has not shown any such conflict here; to the  
 23 contrary, both the federal defendants and the Tribe share the identical position that the challenged  
 24 state-tribal compacts are in accord with federal law and should continue in effect. Dkt. 78, at 6;  
 25 *see* Dkt. 67-9, at 1.<sup>1</sup>

26 <sup>1</sup> Indeed, the Tribe’s own notice recognizes that its Rule 19 arguments can succeed only if the  
 Ninth Circuit’s law regarding Rule 19 “evolve[s].” Dkt. 82, at 2.

1 DATED September 19, 2022.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which sends notification of the filing to all counsel of record.

DATED September 19, 2022.

/s/ Thomas M. Brennan  
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